IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1409 of 1993

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT

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1	Whether Reporters of Local Papers may be allowed to see the judgement ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgement ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GOMTIBEN SHAMJIBHAI PATEL - Petitioner(s)

Versus

ARUNKUMAR PRITAMLAL &3 - Respondent(s)

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Appearance :

MR MB GANDHI for Petitioner No(s).: 1 - 1.
MR MUKESH A PATEL for Respondent No(s).: 1,2,3.

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CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 22/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 28th September, 1993 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.46/1990, the petitioner (plaintiff in H.R.P. Suit

No.1061/1986) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as “the Rent Act”).

The respondents-defendants are the owners of a house bearing Municipal Census No.184/1 (renumbered as Survey No.298/A/B) situated at Jamalpur, Ahmedabad. The plaintiff instituted H.R.P. Suit No.1061/1986 in the Court of Small Causes, Ahmedabad for permanent injunction restraining the defendants from interfering with the possession of the plaintiff of part of the suit house and from interfering with the right of the plaintiff to use the entrance to approach the rooms in his possession. The plaintiff claimed that he was tenant in the rooms at the ground floor and the upper storey at the rear of the house and had a right to use the furnaces constructed in the rear room for the purpose of melting silver.

The suit was contested by the defendants by written statement (Exh.16). The defendants denied that the plaintiff was the tenant in the rooms at the rear of the suit house as alleged. According to the defendants the plaintiff was licensee and was permitted to use one of the furnaces at the rear of the suit house for melting silver and was paying a daily licence fee of Rs.65=00 including the electricity charges; that no part of the suit house was leased to the plaintiff. The learned trial Judge was, by judgment and order dated 19thJanuary, 1990, pleased to allow the suit and pass decree in favour of the plaintiff. The learned trial Judge held that the plaintiff was the tenant of the suit premises at the monthly rent of Rs.100=00 inclusive of taxes and that he was using two furnaces for melting silver for Rs.200=00 per month. Feeling aggrieved, the defendants preferred the above referred Civil Appeal No.46/1990 before the Appellate Bench. The Appellate Bench allowed the appeal and dismissed the suit. Therefore, the present Revision Application. The

Appellate Bench has held that the plaintiff was not the tenant in the suit house; that he was a mere licensee and was permitted to use one of the furnaces at the rear of the suit house for melting silver for daily licence fee; that there was no landlord and tenant relationship between the defendants and the plaintiff. The Court of Small Causes, therefore, had no jurisdiction to entertain the suit.

I have perused the pleadings and the evidence on record. It transpires that earlier the suit house was leased to one Harivallabhdas Kansara. The said Harivallabhdas Kansara had unlawfully sublet one of the rooms of the suit house to the plaintiff. In H.R.P. Suit No.2172/1962 instituted against the said Harivallabhdas Kansara and the plaintiff a consent decree was passed by the Court of Small Causes, Ahmedabad. Pursuant to the said decree both the said Harivallabhdas Kansara and the plaintiff were required to handover the vacant possession of part of the suit house in their possession on or before 23rd May, 1965. In compliance with the said decree the vacant possession of the entire suit house was handed over to the defendants on 12th February, 1966. It is evident from the notice (Exh.68) and the writing (Exh.126) executed by the said Harivallabhdas Kansara on 5th May, 1962 that the said Harivallabhdas Kansara had given one of the furnaces at the rear of the suit house to the plaintiff for a monthly rent of Rs.75=00 and that the possession of the entire suit house was handed over to the defendants by the said Harivallabhdas Kansara under writings (Exh.169 and Exh.170) . Since taking over of possession of the suit house from the said Harivallabhdas Kansara the plaintiff was, under agreement dated 5th March, 1966 (Exh.146), permitted to use one of the furnaces on daily licence fee initially of Rs.11=00 (including Re.1=00 for electricity charges) and gradually increased to Rs.65=00 (including Rs.5=00 for electricity charges) (Exhs.147 to 150) as recorded herein above.

In view of the above evidence and the other oral as well as documentary evidence, I am of the view that the lower appellate court has rightly held that the plaintiff was a licensee licensed to use one of the furnaces at the rear of the suit house and was not the tenant in any part of the suit house. No landlord and tenant relationship was established between the defendants and the plaintiff with respect to the suit house or any part of it.

Mr.Gandhi has relied upon the further affidavit made by the plaintiff on 29th November, 1999. He has submitted that pursuant to the interim order made by this Court, the plaintiff has continued to pay licence fee of Rs.65=00 every day. However, in view of the policy enforced by the Ahmedabad Municipal Corporation, all such furnaces are closed since 1st April, 1998. The licence issued in favour of the defendants has not been renewed after 1st April, 1999. Thus, though the plaintiff has not used the furnaces, he has paid the licence fee as aforesaid. The plaintiff is, therefore, entitled to recover the aforesaid amount of licence fee paid to the defendants since 1st April, 1998.

Mr.Patel has submitted that under the interim orders of the Court, the petitioner has retained the possession of a room in the suit house though he was never a tenant and he had no right to possession in any part of the suit house. The defendants are, therefore, entitled to recover mesne profits from the plaintiff.

Be that as it may, if the plaintiff is entitled to recover the amount of licence fee paid by him, he may take out appropriate proceeding for recovery of such amount. Similarly, the defendants shall be at liberty to take out proceedings for recovery of mesne profits. No order in that

regard is required to be made in the present proceeding.

In view of the above discussion, the Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

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